FILED
APR 1 1946
CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 1037

I. HASBROUCK CHAHOON,

Petitioner,

v.

HARRY M. HICKEY, Collector of United States Internal Revenue for the Fourteenth District of New York,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The above named Petitioner prays that a writ of certiorari be issued to the United States Circuit Court of Appeals for the Second Circuit to review a judgment of that court rendered in the above cause on January 2, 1946 (R. 11) reversing a decision of the United States District Court for the Northern District of New York which held that the petitioner was entitled to recover an overpayment of income tax made for the calendar year 1936, in the amount of $11,311.45, together with interest thereon (R. 1).

The District Court had approved the deduction under section 23(a) of the Revenue Act of 1936, as a business expense or under section 23(e) of that Act, as a business loss, a payment of $48,000 made under an agreement with the Plattsburgh National Bank and Trust Company, and the question is whether the Circuit Court of Appeals was in error in reversing this decision.

Jurisdiction.

The jurisdiction of this court is invoked under section 240(a) of the Judicial Code as amended.

The Opinions of the Courts Below.

The opinion of the District Court (R. 1) is reported in 60 F. Supp. 406. The opinion of the Circuit Court of Appeals (R. 8-10) has not been officially reported.

Statute Involved.

Revenue Act of 1936, c. 690, 49 Stat. 1648:

> "SEC. 23, DEDUCTIONS FROM GROSS INCOME.
>
> In computing net income there shall be allowed as deductions:
>
> (a) Expenses.—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition

of the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

* * * * * *

(e) Losses by Individuals.—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) if incurred in trade or business; or

(2) if incurred in any transaction entered into for profit, though not connected with the trade or business; or

* * * * * * *

Summary Statement of Matter Involved.

Petitioner maintains that he was engaged in business and entitled to deduct from gross income under section 23(a)(2) or under 23(e) of the Revenue Act of 1936 a payment of $48,000 made to the Plattsburgh National Bank and Trust Company as an ordinary and necessary business expense or as a loss incurred in his business. The District Court held on the facts of this case that the payment was an allowable deduction "either as a necessary business expense or a business loss". The Circuit Court of Appeals reversed the District Court on the ground that it thought "that the trial judge made an unjustifiable inference when he said that taxpayer's participation in the transaction in question was a normal business transaction made to protect his extensive interests and substantial salaries in the various corporations, particularly the Bank".

Facts.

The petitioner had extensive business interest in the Adirondack area of New York State consisting of Franklin, Clinton and Essex counties. He was a substantial stockholder, as well as a director and salaried officer, of a number of corporations having assets worth several millions of dollars. He was president of the largest bank in such area. He devoted his entire time to the management of the affairs of these corporations.

During the banking crisis of 1931, petitioner, together with certain other individuals, entered into an agreement with the Plattsburgh National Bank and Trust Company, of Plattsburgh, N. Y., of which he was president, the purpose of which was to bolster the assets of the bank in order to prevent its threatened closing by the Comptroller of the Currency. This agreement was terminated in 1936 and petitioner paid the bank $48,000 to satisfy his obligation under the agreement. This $48,000 was claimed as a deduction by petitioner in his 1936 Federal income tax return. The claimed deduction was disallowed by the Commissioner of Internal Revenue and an additional tax of $11,311.45 was assessed and paid. A claim for the refund of said payment was duly filed. The claim for refund was disallowed and suit was brought in the United States District Court for the Northern District of New York.

The District Court, on the basis of a lengthy stipulation of facts and the oral testimony of the petitioner, made findings of fact and conclusions of law. It found as facts, among other things, that at all times material petitioner was actively engaged in business, that his participation in the agreement with the Trust Company was a normal business transaction, and that the payment of $48,000 was both an

ordinary and necessary business expense incurred by plaintiff in carrying on his business and a loss incurred in his trades of businesses. The court then concluded as a matter of law that petitioner was entitled to the deduction of $48,000, either as a necessary business expense or a business loss, under section 23(a) of the Revenue Act of 1936.

The Circuit Court of Appeals reversed this decision (R. 8). All that was before the Circuit Court of Appeals, as the record on appeal, was the Findings of Fact and Conclusions of Law together with the Judgment of the District Court (R. 1-7). The appellant below did not bring up the stipulation of facts or the testimony of petitioner in the District Court upon which such Findings of Fact were based. Nevertheless, the Circuit Court concludes, without reviewing the evidence considered by the District Judge, that the findings of fact made by him were not justified.

The heart of the difference between the District Court and the Appellate Court was that the former found that the petitioner was actively engaged in business, that his participation in the agreement with the Trust Company was a normal business transaction, and that the payment of $48,000 under said agreement was both an ordinary and necessary business expense in carrying on his business and a loss incurred in his trades or businesses, whereas the Circuit Court ignored the facts found by the District Court, as well as the contentions made by the petitioner, assumed an argument for the petitioner and concluded by holding that the trial judge made an unjustifiable inference when he found as a fact that the petitioner's participation in the transaction "was a normal business transaction made to protect his extensive interests and substantial salaries in the various corporations, particularly the Trust Company."

Questions Presented.

1. Did the Circuit Court of Appeals err in reversing the decision of the District Court, in holding that the findings of fact made by the District Court were not justified, without having before it the evidence that was considered and weighed by the District Court?

2. Did the Circuit Court of Appeals err in reversing the decision of the District Court that the payment was an ordinary and necessary expense or a loss of petitioner's trade or business?

Reasons Relied Upon for Granting of Writ.

This case was tried before the District Judge, without a jury, upon a stipulation of facts consisting of 8 pages with 59 pages of exhibits, together with the oral testimony of petitioner, which covers 15 pages of transcript. From this evidence the District Judge made his findings of fact and conclusions of law, and judgment was entered for petitioner.

Assuming that the findings of fact made by the District Judge did involve mixed questions of law and fact, the question for decision by the Circuit Court of Appeals was whether or not such findings were supported by the evidence. *Helvering* v. *Tex-Penn Oil Co.*, 300 U. S. 481. The summary action of the Circuit Court in reversing the District Court without an examination of the evidentiary facts was without legal justification.

The conclusion of the Circuit Court of Appeals is in conflict with numerous decisions of the United States Board of Tax Appeals involving substantially identical questions. See *Bank of Skowhegan*, 35 B. T. A. 876; *Robert Gaylord*,

Inc., 41 B. T. A. 1119, and *Maloney Electric Company*, 42 B. T. A. 78. Its decision also conflicts with the conclusions reached by the Supreme Court of the State of New York, Appellate Division, Third Department in *People ex. rel. I. Hasbrouck Chahoon* v. *Mealey et al. constituting the State Tax Commission* (1944), 268 App. Div. 49, which involved the identical question under the New York State tax law.

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued under the Seal of this Court to renew the decision of the Circuit Court of Appeals for the Second Circuit in the above case, and that said decision be reversed.

I. HASBROUCK CHAHOON,
Petitioner.

By LAURENCE GRAVES,
Counsel for Petitioner.